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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,728	07/17/2001	Hakan I Karlsson	110014800/LB	6007
909	7590	11/13/2003	EXAMINER	
PILLSBURY WINTHROP, LLP			LEE, SHUN K	
P.O. BOX 10500			ART UNIT	
MCLEAN, VA 22102			PAPER NUMBER	
			2878	

DATE MAILED: 11/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Applicati n No.

09/807,728

Applicant(s)

KARLSSON ET AL.

Examin r

Shun Lee

Art Unit

2878

--The MAILING DATE of this communication appears on the cov r she t with the correspondenc address --

THE REPLY FILED 21 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY (check either a) or b))

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f)

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

- 1 ☒ A Notice of Appeal was filed on 21 October 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2 ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

- 3 ☒ Applicant's reply has overcome the following rejection(s): 35 U.S.C. 112, first paragraph rejection.
4 ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5 ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6 ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7 ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: 6 and 10Claim(s) rejected: 1-4, 7, 8 and 11

Claim(s) withdrawn from consideration: _____

- 8 ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

- 9 ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

- 10 ☒ Other: See Continuation Sheet

CONSTANTINE HANNAHER
PRIMARY EXAMINER
GROUP ART UNIT 2878

Continuation of 5. does NOT place the application in condition for allowance because: applicant argues that the cited references teach away from a centrally positioned inlet opening since the cited references do not want to obscure the radiation path. Examiner respectfully disagrees. First it should be noted that applicant has failed to provide any explanation of the extent and location of the radiation path relative to the center of the limiting surfaces (i.e., applicant is making an assumption the radiation path is located at the center of the limiting surfaces). Thus this argument that a centrally positioned inlet opening would obscure the radiation path relies on an unsupported unstated assumption that the radiation path is located at the center of the limiting surfaces. Moreover, it is noted that Saunders states (column 2, lines 46-53) that "In FIG. 2, filling tube 30 passes through a portion of window 27. It will be appreciated that window 27 may be drilled or otherwise cored to accommodate filling tube 30 entirely therewithin where desired, for example, where it is necessary to avoid contact between the sample and cell members 34 and 35. Also, windows 27 and 28 in FIG. 2 may only partially fill their respective openings within the concept of this invention". The key phrase is "where desired". Thus it is clear that Saunders does not teach away from a filling tube located centrally within window 27. Therefore it would have been obvious to one having ordinary skill in the art to position centrally the inlet opening in the transparent section (i.e., one of the limiting surfaces) in the device of Coates, in order to avoid contact between the sample and cell members while obtaining optical measurements as taught by Simms et al. so as to determine consistency of a fiber suspension as taught by Saunders.

Continuation of 10. Other: in regard to the specification, a certificate of translation was supplied by applicant. However, it was noted in the prior office action that the amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application.